

This Page Is Inserted by IFW Operations
and is not a part of the Official Record

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images may include (but are not limited to):

- BLACK BORDERS
- TEXT CUT OFF AT TOP, BOTTOM OR SIDES
- FADED TEXT
- ILLEGIBLE TEXT
- SKEWED/SLANTED IMAGES
- COLORED PHOTOS
- BLACK OR VERY BLACK AND WHITE DARK PHOTOS
- GRAY SCALE DOCUMENTS

IMAGES ARE BEST AVAILABLE COPY.

**As rescanning documents *will not* correct images,
please do not report the images to the
Image Problem Mailbox.**

03-01-02
"Express Mail" Label No. EL 695 654 280 US
Date of Deposit February 26, 2002

PATENT
Attorney Docket No.: 019934-001710US
Client Reference No.: T001710US

I hereby certify that this is being deposited with the United States Postal Service "Express Mail Post Office to Address" service under 37 CFR 1.10 on the date indicated above and is addressed to:

Assistant Commissioner for Patents
Washington, D.C. 20231
Box DAC

By: 

Rosemarie L. Celli



DAE
#3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Thomas J. Schall et al.

Application No.: 09/919,224

Filed: July 30, 2001

For: IMMUNOLOGIC ACTIVITIES OF
RHESUS CYTOMEGALOVIRUS
ENCODED IL-10 AND HUMAN
CYTOMEGALOVIRUS ENCODED IL-
10

Examiner: Unassigned

Art Unit: Unassigned

PETITION TO GRANT A FILING DATE
UNDER 37 C.F.R. 1.53(e)
WITH THE ACCOMPANYING PETITION
FEE UNDER 37 C.F.R. 1.17(h)

RECEIVED

MAR 05 2002

OFFICE OF PETITIONS

Assistant Commissioner for Patents
Washington, D.C. 20231
Box DAC

P. justment date: 05/21/2002 AKELLEY
03/05/2002 GTEFFERA 00000097 201430 09919224
01 FC:122 130.00 CR

Sir:

A Notice of Incomplete Nonprovisional Application, attached hereto as Exhibit 1, was mailed September 17, 2001. The Notice stated that the application was filed without drawings. Applicants respectfully request this Petition requesting the filing dated of July 30, 2001 for the above-captioned application be granted because the above-captioned application was filed with the 14 drawing sheets. In the alternative, Applicants respectfully request this Petition requesting the filing dated of July 30, 2001 for the above-captioned application be

03/05/2002 GTEFFERA 00000097 201430 09919224
01 FC:122 130.00 CH

granted because the 14 drawing sheets are not necessary for a filing date under 35 U.S.C. 113 (first sentence).

A Petition Under 37 C.F.R. 1.53(e) Filed After the Two Month Period Set in the Notice of Incomplete Non Provisional Application May be Granted

Applicants hereby request that this Petition not be dismissed as untimely. USPTO is not required to strictly adhere to the two month period set forth in 37 C.F.R. 1.181(f) to respond to the Notice of Incomplete Nonprovisional Application. (See 37 C.F.R. 1.181(f) and MPEP 601.01(d). Applicants have filed this Petition promptly after receiving the executed Declaration for the above-captioned patent application, and Applicants have included a Petition for an Extension of Time for four months, from November 17, 2001 to March 17, 2002, to file the Declaration.

Applicants Should Be Granted the July 30, 2001 Filing Date Because The Application Was Filed With 14 Drawing Sheets

Applicants respectfully submit that the following papers, which include 14 sheets of drawings were filed with the USPTO on July 30, 2001 using the Express Mail certificate of mailing procedure under 37 C.F.R. 1.10:

- 1) Utility Transmittal Form (PTO/SB/05) (1 page);
- 2) Fee Transmittal (PTO/SB/17) (1 page, in duplicate);
- 3) Title Page (1 page);
- 4) Specification (49 pages);
- 5) Claims (6 pages);
- 6) Abstract (1 pages);
- 7) Drawings (14 sheets);
- 8) ADS (3 pages); and,
- 9) Return Receipt Postcard.

Copies of the Return Receipt Postcard filed in the above-identified application, and the same Return Receipt Postcard bearing the U.S. PTO application number of 09/919224 and the date of 07/30/01 are attached herewith as Exhibit 2. The Return Receipt Postcard of Exhibit 2 bears the Express Mail Label No. EL387639415US. A copy of the Utility Transmittal Form (PTO/SB/05), attached hereto as Exhibit 3, bears the Express Mail Label No. EL387639415US and states 14 sheets of drawings was filed in the above-identified application

on July 30, 2001. A copy of the Express Mail Label No. EL387639415US bearing the "Date In" of 7-30-01 and the USPS date stamp of "Jul 30 2001" is attached hereto as Exhibit 4.

The Return Receipt Postcard of Exhibit 1, the Utility Transmittal Form (PTO/SB/05) of Exhibit 3 establish sufficient evidence to Applicants' entitlement to the requested filing date of July 30, 2001. The Return Receipt Postcard of Exhibit 1 and the Utility Transmittal Form (PTO/SB/05) of Exhibit 2 both state that Applicants filed 14 sheets of drawings with the USPTO on July 30, 2001 for the above-captioned application.

Alternatively, Applicants Should Be Granted The July 30, 2001 Filing Date Because The Drawings Are Not Necessary Under 35 U.S.C. 113 (First Sentence)

The above-captioned patent application claims priority to U.S. Application No. 60/ 221, 831, and incorporates by reference U.S. Application No. 60/221, 831 in its entirety for all purposes. Therefore, the drawings filed in U.S. Application No. 60/221, 831 are incorporated into the above-captioned application in their entirety for all purposes. The drawings filed in U.S. Application No. 60/ 221, 831 provide the necessary understanding of the subject matter sought to be patented in the above-captioned patent application. The 14 drawing sheets originally filed in the above-captioned patent application are not necessary because the drawings filed in U.S. Application No. 60/ 221, 831 are sufficient to establish Applicants' entitlement to the requested filing date of July 30, 2001. If the alternative form of this Petition is granted, Applicants will submit the drawings filed in U.S. Application No. 60/ 221, 831 in the above-captioned patent application.

Applicants Submit Herewith The 14 Drawings Sheets As Originally Filed in the Above-Caption Application

Applicants respectfully submit herewith copies of the 14 sheets of drawings as originally filed in the above-captioned application.

Applicants Submit The Executed Declaration Herewith

Applicants respectfully submit herewith the executed Declaration in compliance with 37 C.F.R. 1.63 for the above-captioned patent application.

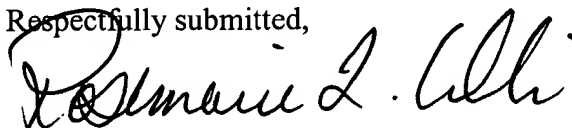
Authorization to Charge The Petition Fee Set Forth in 37 C.F.R. 1.17(h) and Other Fees

Applicants authorize the Commissioner to charge the petition fee set forth in 37 C.F.R. 1.17(h) to Deposit Account No. 20-1430. Because Applicants have stated that the above-captioned application is entitled to a filing date, they hereby request a refund of the petition fee set forth in 37 C.F.R. 1.17(h).

Applicants have filed herewith a Petition for Extension of Time, from November 17, 2001 to March 17, 2002, to respond to the Notice of Incomplete Application. The Petition for Extension of Time authorizes the Commissioner to charge the fee for the four month extension. Applicants authorize the Commissioner to charge the late fee set forth in 37 C.F.R. 1.16(e) for filing a declaration to Deposit Account No. 20-1430.

Applicants authorize the Commissioner to charge any deficiency in fees associated with this paper or during the pendency of this application, or credit any overpayment, to Deposit Account No. 20-1430.

Respectfully submitted,



Rosemarie L. Celli
Reg. No. 42,397

Customer No. 20350

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: 650-326-2400
Fax: 650-326-2422
RLC:lah